FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

BCS/159452

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on August 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly terminated the Petitioner's BadgerCare+ benefits as of August 1, 2014 and correctly denied Family Planning Only Services to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Simone Johnson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. On July 3, 2014, the agency sent the Petitioner a notice indicating that as of August 1, 2014 she would no longer be enrolled in BadgerCare+ because she was over the income limit. (Exhibit 5, pgs. 40-43)

3. On July 9, 2014, the Petitioner provided the agency with two paystubs, one dated May 9, 2014 and one dated July 3, 2014. (Exhibit 5, pgs. 22 and 23)

4. On July 10, 2014, the Petitioner called the agency to complete her FoodShare interview and reported that she had sent in her verification. The agency worker informed the Petitioner that the May 9th and July 3rd check stubs were not sufficient and that she needed to provide the current 30-days worth of pay stubs. (Exhibit 5, pg. 9)

5. On July 11, 2014, the agency sent the Petitioner a Notice of Proof Needed, advising her that she needed to provide acceptable proof of income by July 21, 2014, in order to keep receiving Family Planning Services. (Exhibit 5, pgs. 31-35)

   The agency did not make clear why it was requesting this verification, but it is presumed that because the Petitioner was deemed ineligible for BadgerCare+, that the agency was testing the Petitioner for eligibility for Family Planning Only Services Program, which has a higher income limit of 300% FPL. See BadgerCare+ Eligibility Handbook §40.1

6. The Petitioner did not provide the second pay stub for July 2014, because she did not feel her check stubs from July 2014 accurately reflected her income. Apparently, the Petitioner earned extra income in July 2014, because she received holiday premiums for the July 4th holiday. (Testimony of Petitioner)

7. On July 22, 2014, the agency sent the Petitioner a notice indicating that she was not enrolled in BadgerCare Plus as of August 1, 2014 because her income was over the program limit; and as of July 1, 2014, she was not enrolled in Family Planning Services, because she did not provide the required proof. (Exhibit 5, pgs. 45-47)

8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 31, 2014. (Exhibit 1)

DISCUSSION

"Verification means to establish the accuracy of verbal or written statements made by, or about a group's circumstances. Case files or case comments must include documentation for any information required to be verified to determine eligibility or benefit levels." *BadgerCare+Handbook (BEH) §9.1* Proof of certain information is required to determine eligibility for BadgerCare+. *BEH §9.1* Items that must be verified are categorized as information that it is mandatory to verify and information that is questionable.

Items that it is mandatory to verify are:

1. Social Security Number
2. Citizenship and Identity
3. Immigrant Status
4. Pregnancy, if eligibility is based on the pregnancy, although as of January 1, 2014, it will no longer be necessary to verify pregnancy.
5. Medical Expenses (for deductibles only)
6. Documentation for Power of Attorney and Guardianship
7. Migrant worker's (eligibility in another state)
8. Income
9. Health Insurance Access
10. Health Insurance Coverage
11. Family Re-unification plan for Child Welfare Parents
12. The placement status of a FFCY on his/her 18th birthday

13. Tribal membership or Native American Descent
14. Pre-tax Deductions
15. MAGI Tax Deductions

BEH §9.9

Information is questionable for BC+ when:

1. There are inconsistencies in the group's oral or written statements.
2. There are inconsistencies between the group's claims and collateral contacts, documents, or prior records.
3. The member or his/her representative is unsure of the accuracy of his/her own statements.
4. The member has been convicted of Medicaid or BC+ fraud or has legally acknowledged his/her guilt of member fraud.
5. The member is a minor who reports that s/he is living alone. This does not apply to minors applying solely for Family Planning Services.
6. The information provided is unclear or vague.
7. CARES Worker Web (CWW determines the case meets an automated Error Prone Profile.

*BEH §*9.10

"Except for verification of access to employer sponsored health insurance, the member has primary responsibility for providing verification and resolving questionable information. However, the IM [income maintenance] worker must use all available data exchanges to verify information rather than requiring the applicant to provide it." *BEH §9.8*

BadgerCare+ benefits may be denied or reduced when all of the following are true:

1. The member has the power to produce the verification.

2. The time allowed to produce the verification has passed.

3. The member has been given adequate notice of the verification required.

4. The agency needs the requested verification to determine current eligibility.

BEH §9.11.4

Current benefits may not be denied or reduced because a member does not verify some past circumstance not affecting current eligibility. *Id.*

The agency must give the member a minimum of ten days to produce the requested verification. *BEH §9.4*

In the case at hand, the notice sent to the Petitioner on July 11, 2014 clearly indicated that the Petitioner needed to provide verification of her income, which could be either 30-days worth of paystubs **or** a signed statement from her employer **or** a signed Employer Verification of Earnings Form from her employer. The July 11, 2014 notice clearly stated that the required proof needed to be provided to the agency, by July 21, 2014, otherwise her benefits could be denied, decreased or ended. The Petitioner did not comply with the agency's request for verification.

Based upon the foregoing, it is found that the agency correctly denied the Petitioner benefits through the Family Planning Only Services Program.

The Petitioner argues that she should not be held to the July 21, 2014 deadline, because she did not timely receive the Notice of Proof Needed. The Petitioner claimed that she did not get the notice of proof needed until the end of July beginning of August. The Petitioner's claim is not credible.

The Petitioner also made the equitable argument that it was unfair to reject the paystubs that she did provide, because her two July paystubs would not have accurately reflected her income, due to bonus pay and extra hours she worked during the July 4th holiday. However, administrative law judges do not possess equitable authority and must apply the rules as they are written. Further, the Petitioner had other options, besides providing the July paystubs to verify her income; she could have provided her two paystubs from June, or several months worth of paystubs; she could have provided a simple signed statement from her supervisor stating how many hours per week she works, at what rate of pay and how frequently she gets paid. Petitioner didn't even do this.

As such, the agency correctly denied Petitioner benefits through the Family Planning Only Services Program due to a failure to timely provide verification.

It should be noted that even if the agency had accepted the Petitioner's May 9, 2014 and July 3, 2014 paystubs, which Petitioner said more accurately reflected her income at the time, she still would have been over the income limit for BadgerCare+ benefits. The May 9, 2014 check had gross income of $485.76 and the July 3, 2014 check had gross income of $496.09. (Exhibit 5, pgs. 22 and 23). This totals $981.85 of gross monthly income.

Effective April 1, 2014, an adult must have household income must be below 100% the Federal Poverty Level, in order to be eligible for the BadgerCare+ health plan and all available gross income must be counted. *BEH §16.1* 100% of FPL for an assistance group size of one is $972.50. *BEH §50.1.*

Petitioner's income of $981.85, which Petitioner testified was more accurate, was over the100% FPL, $972.50 income limit. As such, the agency was correct in its determination that Petitioner was over the income limit for BadgerCare+ benefits.

Petitioner indicated at the hearing that her situation has since changed. If that is the case, she should reapply for benefits.

CONCLUSIONS OF LAW

The agency correctly terminated the Petitioner's BadgerCare+ benefits, effective August 1, 2014 and denied the Petitioner benefits through the Family Planning Only Services Program.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of September, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 17, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability